Supreme Court, U.S.
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MICHAEL RODAK, JR., CLERK

No: 80-391

IN THE

SUPREME COURT OF THE UNITED STATES

October Term

1980

Geoffrey R. Akers,

Petitioner Pro Se

v.

COMMISSIONER OF INTERNAL REVENUE,

RESPONDENT

PETITION FOR WRIT OF CETIORARI

Geoffrey Akers
25 Lincoln Ave.
Norwich, CT
06360

(038897860

QUESTIONS PRESENTED

The Internal Revenue Code, like all bodies of regulations, must exist in coharmony with the laws of society. To this end, the Code must be in harmony with the Constitution and the guarantee of the inalienable rights in the Bill of Rights. The Constitution, the Church, and the Code should all be in harmony with one another; this is the central theme in the separation of Church and State.

It is the teaching of Christian Science(and all Christian religions for that matter) that the doctrines of Christ be followed; one of these doctrines is the Sermon on the Mount. In this Sermon, great emphasis is laid on "alms in secret" for man's oneness with the Father. Under the Constitution, individual and collective freedom is guaranteed with respect to the free exercise of religion. This Court has held the right to believe to be absolute. The petitioner is a Christian Scientist, and, in the manner of the Sermon on the Mount, endorsed by his faith,

he donated cash to his church in 1974 under the First Amendment provision, the Sermon on the Mount, and in accordance for substantiation, with Sects 1.6001, 1.170, and 1.274(1-5) of the Code. The questions presented for review are indeed those elements that actually constitute substantiation with respect to tax requirements, and the issue of separation of Church and State; namely to what extent is the IRS permitted to "interfere" or prescribe manners in which the donors must contribute donations in order to be allowed the deduction. The letter of the tax law was satisfied; the letter of the religion was satisfied; IRS "local policy" has attempted to bend the law to imply more than is written or implied by trying to propose "mail-ins" outside of normal Sunday service, or "marked bills" etc. All these modes infringe on the individual donor's right to contribute in the manner he wished under the Sermon on the Mount and the teachings of the Church. The printed tax law prescribes no such suggestions.

PARTIES

Petitioner is a member of the First Church of Christ,Scientist in Boston,Massachusetts. Although the issues presented herein are the petitioner's, the Church Legal Department in the past has had difficulty with the IRS National Office on the matter of making cash contributions and having the IRS allow the appropriate deductions to such donors. Hence, although this isse is brought by a single petitioner it is broad in scope as it addresses the entire question of cash contributions to church, the resolution of the "IRS local policy" and the separation of Church and State in matters of separate interest.

Respondent is the Commissioner of Internal Revenue.

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term

1980

No._____

Dr. Geoffrey Roy Akers, Petitioner

v.

Commissioner of Internal Revenue, Respondent

PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

By order of the US Tax Court(C. Hall,J) of May 29,1979, the Petitioner was denied a deduction in its entirety of the $8600 cash contribution claimed, on gross income of $24,225.31, for the tax year 1974. Attached to the return was an itemized list setting forth specific cash contri-

butions made to the First Church of Christ,Scentist in Boston and New London on each Sunday of the year. The Court was of the opinion that these religious beliefs were uniquily the taxpayers of making anonymous cash contributions as 1% of the donations received by the Mother Church in Boston are from anonymous donors.(Tree-quarters of the plate each Sunday were cash however). The Court suggested that the Petitioner mail cash to the Church in letters identifying himself, mail in a check of else contribute checks only to the Sunday collection. Hence, the Court disallowed entirely the $8600 donation. Petitioner also reported no other extraordinary expenses in 1974, was single with no children, and had no medical,entertainment or otherwise large expenses at all. A cash flow analysis presented, indicated the distinct possibility of the contributions existence, the only requirement being that petitioner had to live on $400 a month for some three months of the year; entirely possible for the conservative

petitioner. By order of the Second Circuit Court of Appeals, a tacit affirmation with no explanation was issued December 26,1979 on this case on appeal. A petition for rehearing was denied by the Court of Appeals (Case 4174-2nd Cir. Akers v. CIR) on July 28,1980.

JURISDICTION

The jurisdiction of this Court is invoked since this Court has final authority over all cases of a Constitutional character. As such, under the provisions of the Constitution, it is empowered to enforce and protect Constitutional prescriptions in points of law. The issues presented in this case involve the free exercise of religion under the provisions of the Constitution, as well as the issue of separation of church and state. Such questions are of such magnitude and stature, that rightly this Court should consider them. The application of the First Amendment provisions involved in this case,require this Court's study. This case involves the following points in conflict, which

require the Court's consideration to resolve:

a.) The Second Circuit Court of Appeals has rendered a decision in conflict with a prior decision of the self-same Court, on essentially the same legal substance,(Cohan Rule)

b.) The Second Circuit has decided a question of law based upon an erroneous proposition of the Tax Court, in a way in conflict with applicable decisions of this Supreme Court on the matter of separation of Church and State and the free exercise of religion,

c.) The circuit court has decided a question of federal law which has not been, but certainly should be, as it involves all cash charities throughout the country, settled by this court for the sake of uniformity, clarification and resolution of the issue.

CONSTITUTIONAL PROVISIONS INVOLVED

The following constitutional provisions are

involved in the Petition for Certiorari:

United States Constitution, Amendment I:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.."

STATEMENT OF THE CASE

The Supreme Court has stated(333US 203(1948)), (333OUS 1,1947) that the First Amendment was intended to erect a wall of separation between church and state. In the case at bar, the IRS has tried to dictate what form contributions must take when one is making a claim for a charitable contributions deduction for a church. The IRS in essesnce is penalizing a taxpayer for giving cash in the manner of the Sermon on the Mount(alms in secret-anonymously) by attempting to deny a deduction for donating in this mode. By trying to dictate what "approved" forms contributions may take to "qualify" for the tax deduction, the IRS in essence is infringing on the free exercise of religion.

Although the IRS codes provide for alternate modes of proof as a diary,account book,statement of expense, the IRS has chosen to ignore its own code and impose some arbitrary means of verification by trying to coerce one to donate by "mail-ins" etc that is not authorized by law of church policy. Such mail-ins are to be regarded as OVER and ABOVE the normal Sunday collections, the Church states in its annual per capita tax drive. Although alternate proof of the existence of the contribution was established by a cash-flow analysis, and the cash receipts of the Mother Church($90000 per year in cash), as well as the production of a record or diary of cash contributions made throughout the year,giving dates,places and amounts contributed, as prescribed by Code Section 1.6001,1.274(1-5) and 1.170, the IRS insisted on "local policy" interference completely divorced from the printed law by trying to use the argument that diaries are all right for business substantiation but not all right

for charitable institutions deductions, in essence applying a double standard, one for business records and another for charitable records. Such a policy, not founded in printed Code, or constitutional provision, has no basis in any legitimate foundation. The Department of Justice, acknowledged in the Second Circuit that the diary and cash flow analysis arguably supported taxpayer's position.

As outlined by the Christian Science Committee on publication, the maintenance of a diary has been used satisfactorily by church and tax authorities in the past to establish the claim for deduction. The Christian Science Church does not maintain a system of pledges,dues or assessments(Record, Footnote 12, page 12 Appellee's Brief on Appeal and 2nd Cir.), nor does it maintain a system of pledges-records for cash contributions made. The fact that there are no receipts given during,before or after service on Sundays for anonymous cash contributions made as well as the number balancing on the return to show where the contribution occurred, provide

evidence of a very influential kind in establishing the claim for deduction. Hence, the union of the diary in accord with Sections 1.6001(Charitable Contributions Allowance Regulation), 1.274(1-5) (Substantiation requirement) and Section 1.170 requiring statments from donee institutions-- churches themselves that verified they received funds adequate to cover claims, establish the deductions under the rules defined by the regulations. Any other "local policy" divorded from the law, is essentially tyrannical, and allows the IRS to be a law unto itself, whereby it can apply the law when it is to its advantage and ignore the law when it is not.

Interference arises when the government attempts by local policy not related in any way with the printed code, to act outside the purview of its own regulations, by placing a procedural mandate on anonymous religious contributors for production of receipts for contributions made when the Church does NOT give receipts.This practice not

only discourages persons from making donations as seen in the decline of received contributions by charities in recent years, a growing national problem, but it also usurps personal freedom of expression and gratitutde in the religious service through bureaucratically dictating a certain "approved" mainifestation of gratitude. Denial of allowances for cash contributions made may serve as a base for general distrust of people by the IRS, as though individuals could not conduct their own affairs but needed the government to act for them. Such practices emanating from IRS local policy promulgates the concept of guilty until proven innocent, a philosophy in contradistinction to the US system of justice. As indicated above, there are many alternative ways of verifiying the contribution's existence in accord with the Code without having to resort to invading one's free exercise of religious worship; such a process is wanton, and is entirely inappropriate by the IRS. What in fact constitutes "proof" is only relative,

as for instance, if one had such receipts for a matter but no cash flow analysis to support the receipts, the conclusion whould be he had fallacious receipts, but according to this position of the IRS, receipts are the sypreme "proof" above dates and places and amounts verified by others from diaries and hence this contradiction would not matter; yet by the same argument if one had cash flow analysis and receipts but in a diary had expenses for other things,then such a diary would predominate. This illustrates the fact that the position that the IRS has taken,namely that receipts constitute the only "real" evidence is fallacious, as the evidence when taken as a whole, is only relative. In this instance, the "evidence" is a diary and cash flow analysis. It simply is not possible to obtain receipts during Sunday service. Any other prescription outside of Sunday service is in essence an invasion on the free exercise of religion and is prohibited

by the Constitution. Indeed a special time is allocated during church service for contributions and to try to coerce one to donate outside of this period is to try to outlaw the whole provision for the free exercise of religion within the service; this violates the First Amendment. Indeed, on Line 213 Schedule A of Form 1040, a separate line is provided for cash contributions made during the year with no special restrictions or limits stated by IRS.

In People vs Hurlburt(24 Mich 44) Mr. Justice Storey has shown that constitutional freedom means more than just liberty permitted but consists in the civil and political rights which are absolutely guaranteed,assured and guarded in one's liberties as a man and a citizen.....his right to worship God in the manner of his own conscience....all these are guaranteed and protected and not held at the mercy of any man or popular majority. In Davis v. Beason(133 US 333) the Supreme Court has

said that the meaning of the word religion in the Constitution has reference to one's views of his relations to his Creator and of the obligations that they impose of reverence of his being and character and of obedience to his will... with man's relations to his Creator and the obligations he feels they impose, and the manner in which an expression shall be made by him of his beliefs on these subjects, no interference can be permitted...Once again, this Court is being called upon to reiterate these principles.A similar case was cited in principle, in Watson vs Jones(80 US, 13 Wall 679(1871)):"In this country the full and free right to entertain any religious belief and to practice any religious principle,and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights is accorded to all."

This case then properly involves the First Amendment,

as well as the Privacy Act of 1974 in its entirety.

REASONS FOR GRANTING THE WRIT

The Court of Appeals affirmed tacitly solely on the basis of the Tax Court; hence the Tax Court decision lies at the base of the argument and needs to be examined. The Tax Court opinion(TC Memo 1979-217) of May 29,1979 cited earlier is erroneous because of the following reasons:

1) Nowhere in the IRS code whatsoever are there any specific requirements,stated or implied, for contributions to be made by check or through some kind of makeshift "mail-in" procedure. In fact, under 1.274(1-5) business is explicitly allowed the use of books of records or diaries. To allow such an act to business and deny it to religious activities is discrimination against religion by a double standard and this is forbidden.

2) It is not possible to obtain such receipts during or after a service because of the disruption it causes. Forcing people to

donate outside the service on mail ins interferes with the donation during service program of the church. To stop this it would be necessary to outlaw all in service donations, also that places selective burdens on one taxpayer and not on others. To make everyone donate outside of service is to invade the free exercise of religion during service and is an attack on the First Amendment. Section 1.170 in its most stringent form, requiring statments from donee institutions was verified when the Assistant Treasurer cited that the church received over $90000 per year in cash well in excess of the $6800 in cash contributed by the petitioner. To attempt to dictate to the donors when they should donate to obtain the deduction, is in essence invading on their right to give and worship the way they believe, regardless of whether that way be individual or collective, the right to exercise that right is preserved. Practically, if everyone were forced

to mail in there would be no need for the offering to be had during the service and governmental interference would be in effect. It would be forbidden by the government to donate during service and the free exercise of religion would be quashed. The mail in suggestion by the Tax Court is not applicable, not feasible and in violation of the First Amendment.

Checks are given by only one-quarter of the Sunday attendants(see record). Three-quarters of the plate contributions are in cash as stated by the Assistant Treasurer. The overwhelming amount of people give cash during service not before or after as seen by these statistics. Hence giving checks is not a necessity and by no means is it the only way to make a contribution. If it were so imperative to give checks, then line 21 Schedule A of Form 1040 would be eliminated else this would be selective enforcement, a violation

of the equal protection clause of the Fifth Amendment. Also, by forcing one to give checks, IRS is now requiring one to open and maintain a checking account, to say nothing of violation of the interpretation of the Sermon on the Mount endorsed by the Christian Science movement(P 271 Science and Health by Mary Baker Eddy), where the choice in this case is to not even have one. Clearly there is in fact no way that such a decision could even be implemented without invading on the individual's rights prescribed under the Constitution.

IRS Regl 1.6001,1.170 allow both contemporaneous and non-contemporaneous diaries. The order is immaterial as even said in FTR, since it is the accuracy of the information and not the form that is important. Clearly this is just and attempt on the part of IRS to try to discredit the diary, without the context of the providions of the law that makes the order immaterial as long as the information contained is accurate.

The diary was prepared at the end of the year from notes and was not intended to be contemporaneous, but rather to provide the essential information,dates,places,amounts contributed,etc, all required by the regulations. Donee institution verfication from the church was obtained from the Asst. Treasurer.

The Second Circuit laid down a milestone decision known as the "Cohan Rule", where it stated that absolute certainty in establishing a taxpayer's expenditures is sometimes impossible (here it is since cash given anonymously and in the spirit of the Sermon on the Mount) and that the Tax Court should make as close an estimate as reasonable based on the factual numbers and cash flow analysis. Certainly, if $78(the arbitrary amount allowed by IRS as "appropriate") were as close an estimate as possible that the Tax Court Could bake this would leave $8500 completely unaccounted for and this IRS approved inconsistency would

develop. Even if one were to try to implement the Tax Court decision, irrespective of the Freedom of Religion issue, the obtaining of receipts from a church that does not maintain them for cash contributions made in the spirit of the Sermon on the Mount, endorsed by the religion of Christian Science, would be impossible. It simply is not possible to do such an act in this church when the church has no system of assessments dues or pledges. The extent of available verification can be the maintenance of a diary, records in accordance with the Treasury regulations 1.6001, 1.170, 1.274(1-5). Otherwise the tax status of the donors is penalized for attending such a church that follows the Sermon on the Mount and has no receipts for cash contributions made. The Tax Court has chosen to uphold governmental interference in dictating what form contributions must take to be approved through upholding a local IRS policy not supported by printed law.

IRS local policy allows $78 per year for contributions made with no records at all. This very act, shows IRS allows no receipts in contexts of contributions--$78/yr. The very figure represents arbitrary interference on what form contributions may take, since this policy allows one "form" of contributions namely cash, to be used up to one extent, and another brm beyond $78, as if the 79th dollar were somehow "different" and thus suitable to have some other standard applied to somehow make it right. There is no justification why double standards should be applied to varying amounts of contributions, and this policy too promulgates non-separation of church and state by placing governmental procedural mandates on religious offerings of gratitude. The wrong emphasis is on the manner of the contribution and not the contribution itself.

In summary the resons for granting the writ

include:

a) The Second Circuit has rendered a decision in conflict with the guidelines it has established with the Cohan Rule, whereby absolute certainty in determining the taxpayer's expenditures because the Church does not maintain a record of cash contributions made by petitioner, is impossible to obtain. Here is a perfect instance for the application of the Cohan rule, since if it were to only apply to business, this would be discrimination against religion.

b) The Second Circuit has decided an important question of federal law in a way in conflict with the prior decisions of the Supreme Court. The question now at bar is to maintain the harmony of the Constitution and the Church and the IR Code, as separate,

yet coharmonious elements in the law. To implement the Tax Court decision upon which the Second Circuit relies, in addition to being in conflict with a) above would require that one's free exercise of religion be invaded by denying the right of one to make "alms in secret" prescribed by the Bible, in favor of some form of "mail-in" basis. For that matter why donate at all in church with this erroneous scintilla of reasoning?

CONCLUSION

The constitutional issue of freedom of religion has been presented herein as well as the maintenance of the Constitution as the central element of US law. Coharmony of the tax law is pleaded with the Constitution to insure adequate implementation of both. The letter of the law of the tax code are in harmony with the Constitution and separation of church and state, but local policy of the IRS, acting out of its own blind

impulse, with actions not based in the code or statutes, is completely at variance with these. It is the Constitution and its retention, and not the usurpation of it by local custom that governs the laws of this land. Such actions as the local policy would promulgate were condemned by this Court in Boyd vs US(116 US 616, 1937): "The Supreme Court seeks to protect the citizen from encroachment on his constitutional rights because illigitimate and unconstitutional practices get their first footing in apparently innocuous forms and by silent and slight deviations from legal modes of procedure. This can only be avoided by adhering to thenule that constitutional provisions for the securities of persons and properties be liberally construed. ..It is the duty of the judicial system to be watchful of the constitutional rights of the citizen, and against any stealthy encroachments thereon. Their motto should be obstra principis".

The Appellant prays that the Supreme Court of the United States will grant this Petition for Certiorari, and will finally reverse in is entirety the decision of the Second Circuit Court of Appeals of July 28,1980 reflected in case 79/4174 which plases as its base the opinion of the Tax Court(TC Docket 1650-77-TC Memo 79-217) with regard to charitable contributions, and the consequent free exercise of religion. The petitioner enters his appearance pro se in accordance with the rules of this court, and invokes the principle of Haines vs Kerner (404 US 519,520(1972)),whereby litigation drafted by pro se appellants is to be liberally construed.

DATED: Sept 9, 1980

Respectfully submitted,

Geoffrey R. Akers,
Petitioner, Pro Se

APPENDIX A

UNITED STATES COURT OF APPEALS FOR

THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals in and for the Second Circuit, held at the United States Court House in the City of New York, on the 26th day of December, 1979,

Present:

Hon. Wilfred Feinberg, Chief Judge

Hon. William H. Timbers,

Hon. J. Joseph Smith, Circuit Judges

Docket No:

Geoffrey Roy Akers
Petitioner-Appellant

79-4174

v.

Commissioner of Internal Revenue, Respondent
Appellee

A petition for redetermination of tax deficiency having been filed by appellant pro se,

Upon consideration therefor, it is Ordered that said petition be denied and order be AFFIRMED on the decision of Judge Hall entered May 29,1979.

A. DANIEL FUSARO, Clerk

UNITED STATES COURT OF APPEALS FOR

THE SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House in the City of New York, on the 28th day of July, 1980,

Present:
Hon. Wilfred Feinberg

Chief Judge

Hon William H. Timbers,

Hon J. Joseph Smith, Circuit Judges

Geoffrey R. Akers,

Petitioner-Appellant

v.

Docket No:

79-4174

Commissioner of Internal Revenue,

Respondent-Appellee

A petition for a rehearing having been

filed herein by appellant pro se

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

A. Daniel Fusaro,
Clerk

T. C. Memo 1979-217

UNITED STATES TAX COURT

GEOFFREY ROY AKERS, Petitioner v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No: 1650-77 Filed May 29, 1979

Geoffrey Roy Akers, pro se

David N. Brodsky, for the respondent

MEMORANDUM FINDINGS OF FACT

AND OPINION

HALL, Judge: Respondent determined a $3,152.22 deficiency in petitioner's 1974 income tax, plus a $157.61 addition to the tax under section 6653(a). Due to concessions by the parties, the sole issue remaining is whether petitioner has substantiated charitable contributions in 1974 in an amount

in excess of $78.

FINDINGS OF FACT

Some of the facts have been stipulated by the parties and are found accordingly.

Petitioner resided in Norwich, Connecticut at the time he filed his petition.

During 1974 petitioner was a member of the First Church of Christ,Scientist, Boston, Massachusetts, and the First Church of Christ,Scientist, New London, Connecticut.

On his 1974 income tax return petitioner deducted charitable contributions as follows:

First Church of Christ Scientist,Boston	$6945
First Church of Christ Scientist,New London	1620
Salvation Army and Boy Scouts	110
Total	$8675

Attached to the return was an itemized list setting forth the specific cash contributions made to the Boston and New London churches on each Sunday of the year. This itemization

was not a contemporaneous diary of such contributions. On his 1974 return petitioner reported gross income of $24,225.31.

Respondent disallowed petitioner's deductions for charitable contributions for 1974 to the extent they exceeded $78 on the grounds that petitioner had failed to substantiate such contributions.

OPINION

Sect. 170(a)(1) provides that " a charitable contribution shall be allowed as a deduction only if verified under regulations prescribed by the Secretary". Section 1.170A-1(a)(2)(iii), Income Tax Regs provides that the District Director may require statements from donee organizations corroborating claimed contributions.

Petitioner claims he made his large donations to the Church in cash and anonymously so that no verification from the donee is possible. The only documentary support furnished by the petitioner for the claimed

contributions was the schedule attached to his 1974 return. The schedule, which is in inverse chronological order, is not a contemporaneous diary.

Petitioner testified at trial that he made his claimed contributions anonymously because of his religious convictions as a Christian Scientist. However, it is clear that such convictions are almost uniquily his, since the assistant treasurer testified that less than one per cent of the donations received by the Mother Church in Boston each year are from anonymous donors. The Mother Church receives between seven million dollars and eleven million dollars annually in donations.

Moreover, members of the Church may receive verification of their donations in many different ways. Some members mail cash to the Church in letters identifying themselves; the treasurer's office records

the name of each such donor and the amount contributed. Some members mail checks to the Church. Receipts are given by the Church on request. Some members place checks in the Sunday collection plates. Thus, petitioner easily could have made his donations in such a manner that they could have been verified by the church had he so desired.

Petitioner's only evidence of substantiation in this case beside the schedule attached to the return is his testimony. We are not persuaded by that evidence that petitioner made charitable contributions in 1974 in excess of the $78 allowed by respondent. Petitioner, on whom the burden of proof rests (Welch v. Helvering 290 US 111(1933) has failed to carry his burden.

C. Hall, Judge

APPENDIX B

The following tax laws support the petitioner's position, as they were followed in the preparation of the tax case and tax return:

IR Code

Section 1.6001,26USCA Fed. Tax Regl. p 3245

"Any person subject to tax under Subtitle A of the Code shall keep books of records or accounts as are sufficient to establish the deduction." (No requirement for only receipts, records and diaries(account books) establish the deduction cited here)

Section 1.274(5) Substantiation Requirement, p 913 Fed. Tax. Regl. 1974-Vol 1(2)-

"To meet the adequate records requirement, a taxpayer should maintain an accurate account book, diary,statement of expense or record sufficient to establish the deduction." (Here taxpayer maintained a diary and obeyed this regulation. The fact that this regulation applies directly to business is

immaterial, as it applies to good recordkeeping principles; and these are applicable to any deduction charitable, businesses, etc.

Section 1.274 "The Commissioner may ONLY require documentary evidence in a connection where such evidence is practical." Here, it is not practical to obtain receipts from a church that does not give them as evidenced by the assistant treasurer's testimony of record and footnote 12 on page 12 of the government's reply brief in the Court of Appeals.

Section 1.170 A-1 page 638 FTR 1974-Allowance of Charitable Contributions-"Taxpayer shall state in income tax return name of organization amounts contributed and dates where contributions were made" This is exactly what the taxpayer did.

CCA-2-1930 Vol 38A Federal Digest-"Absolute certainty in fixing a taxpayer's expenditures is not required. A reasonable estimate should be made."

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OCTOBER TERM, 1980

GEOFFREY AKERS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
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In the Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-391

GEOFFREY AKERS, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Petitioner seeks review of the decision below upholding the Commissioner of Internal Revenue's disallowance of his charitable contributions deduction for 1974 to the extent that it exceeded $78.

The pertinent facts may be summarized as follows: Petitioner was a member of the First Church of Christ, Scientist, both in Boston, Massachusetts, and in New London, Connecticut. On his 1974 federal income tax return, he reported gross income of $24,225.31 and claimed a deduction for charitable contributions of $8,675, of which $8,565 represented alleged donations to the two churches in Boston and New London. Petitioner attached to his income tax return an itemized list, compiled after the end of the year in issue, of specific cash contributions made to the two churches on each Sunday of the year. The Commissioner disallowed all but $78 of

the deduction because petitioner failed to substantiate it adequately and issued a notice of deficiency. Petitioner sought a redetermination of this deficiency in the Tax Court which upheld the Commissioner's disallowance on the ground that petitioner had not met his burden of proving that he had in fact contributed the amount claimed. The court of appeals affirmed (Pet. App. A).

Section 170(a)(1) of the Internal Revenue Code of 1954 (26 U.S.C.) allows a deduction for charitable contributions, provided they are verified under regulations prescribed by the Secretary of the Treasury. The regulations provide that "[a]ny deduction for a charitable contribution must be substantiated, when required by the district director, by a statement." 26 C.F.R. 1.170A-1 (iii). Here, petitioner presented no proof, other than his uncorroborated testimony and a list compiled after the end of the year in issue, that he had made any contributions, much less that he had contributed in excess of the $78 allowed by the Commissioner. The lack of any documentation or independent support for the donations justified the Tax Court's ruling that petitioner did not meet his burden of proving his deductions.

Petitioner first contends that he satisfied the substantiation requirement under the rule of *Cohan* v. *Commissioner*, 39 F. 2d 540 (2d Cir. 1930). In *Cohan*, the court allowed a deduction for an approximation of business expenses in the absence of detailed documentation. But the regulation applicable to charitable deductions precludes such approximation. Furthermore, the rationale of *Cohan* is not applicable here because it permits a deduction in the absence of exact documentation only if the taxpayer first establishes that he had in fact spent an amount exceeding the

deduction allowed by the Commissioner. Here, petitioner did not prove that his donations exceeded $78, the amount allowed by the Commissioner.

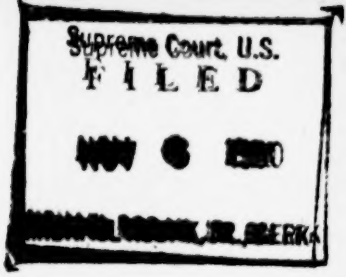
Petitioner also argues that the substantiation requirement violates his rights under the Free Exercise Clause of the First Amendment. But in so contending, petitioner confuses his right, protected by the First Amendment, to donate to the church of his choice, with his privilege, granted by legislative grace through the Internal Revenue Code, to deduct such contributions when computing his taxable income. It is beyond question that the privilege of claiming a charitable deduction can be conditioned on adequate proof without violating petitioner's constitutional rights. *E.g., Hearde* v. *Commissioner,* 421 F. 2d 846 (9th Cir. 1970).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

OCTOBER 1980

No 80-791



IN THE SUPREME COURT

OF THE UNITED STATES

October Term 1980

GEOFFREY ROY AKERS, PETITIONER

V.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT

PETITIONER'S REBUTTAL

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IN THE SUPREME COURT OF THE

UNITED STATES

October Term,1980

No 80-391

DR. GEOFFREY ROY AKERS,

PETITIONER

V.

COMMISSIONER OF INTERNAL
REVENUE,RESPONDENT

PETITIONER'S REBUTTAL

The petitioner, Geoffrey Roy Akers,in the above entitled case, under Rule 22 of this Court, submits this rebuttal to each and every point raised in the Respondent's Memorandum in Opposition.

Preliminarily, the Respondent did not reply within the 30 days allowed by Rule 22(1). The case was docketed Sept 12,1980; Respondent replied October 21,1980, beyond 30 days allowing for receipt time. As a first basis, the petitioner requests the Court consider Respondent's Motion filed untimely as it does not conform to Rule 22(1).

The facts of the matter as well as the Brief of the Respondent in essence actually support well the position of the petitioner not that of the Respondent at all. Examination of the Memorandum in Opposition and the facts reveals the following flaws:

Page 2 of Rpdt Mem: Under Section 1.6001 for Allowance of Charitable Contributions, a listing of specfic facts,churches,dates, and amounts is adequate record to establish the deduction. This is a printed regulation. The IRS has misstated the Section 1.170 reqr. becasue its full context is given by the Tax

Court opinion attached to Petitioner's Petition. The regulation ends, "by a state ment from DONEE INSTITUTIONS. This in fact, was done, as the Asst. Treasurer of the Mother Church(Boston,Mass) testified that about 70,000 to 90,000 was received by that church in cash during the year in question; hence the 6900 claimed by the petitioner represented only 8% on average of the cash contributions of the church. Here, independent proof,required by the regulation in even its most stringent form was provided as all numbers balanced. This is not true that there was no proof because the independent testimony of the Treasurer and the diary in accordance with Section 1.6001 with material facts is all that the code essentially requires.

The regulation applicable to charitable deductions does NOT preclude such an approximation; it says nothing at all to that effect

because it deals only with the records and their nature and needed information. In fact, in the cases cited in the petition, the Tax Court has allowed on numerous occassions an allowance for contributions made by an approximate method realizing full well, that to not allow the deduction creates a mathematical imbalance in the return, the same that occurs here as we shall see if one takes the position of the IRS. Also, if an approximation under the Cohan Rule is allowable in business and not in charity, this is discrimination against religion, and contradicts the entire Federal doctrine in the first instance, of separation of church and state.

Page 3 is mathematically fallacious. If it is not true that petitioner spent more than $78 for church than one ends up with a $9000 discrepancy on the return! That is, there is $9000 completely unaccounted

for, hence the mathematics and "numbers do not lie" doctrine show that the petitioner expended funds far in excess of $78 that would establish a basis for the Cohan estimation in the first instance and a analogous estimate to charity as in business in the Second. Indeed, section 1.274(1-5) allows diaries as sufficient to satisfy the substantiation requirement in the IR Code, hence the IRS position here is internally contradictory.

The IRS does not state the facts. The PRINTED regulation is completely in accord with the First Amendment, as it does not coerce one to donate in a certain manner(eg receipts violating the Sermon on the Mount that alms be in secret, and donate by mail-in outside of church) it is the "LOCAL-POLICY" of demanding receipts when the printed regulation does not prescribe them that is at issue here. In other words, the IRS is not even following its own printed regulations, and in so doing it violates

the First Amendment, because it follows a course that is prescribed by NO written regulation at all in the code. That is, what is being argued here is, not the printed code adopted by congressional action, nor the true separation of church and state which are both correct, but the bureaucratic misstatement of the regulations about the facts and areas of deductions, that permits a local IRS office to take the law into its own hands and make up some interpretation that isn't even in the printed code! Such nonsense is an insult to intelligent people.

Also, testimonial evidence was presented by the petitioner at trial and the diary was presented under the "best evidence rule", as it is factual(stated by the Asst Treasurer at Tax Court) that the church does NOT maintain a system of records or receipts for cash contributions made. The principle of giving in

secret in the manner prescribed by Matthew 6: 1-4 in the Bible is another example of symbolic expression and held inviolate by this Court under the right to believe and practice so long as no one is hurt. Certainly noone is hurt during a church service!

Also, the act of IRS meddling inside the worship ceremeny is another step in the invasion of privacy and the loss of individual rights in the society. The right to worship and manifest one's gratitude in the manner he sees fit is essential to a free society, as who is a bureaucracy to judge one's soul!???

This case requires Supreme Court consideration because in the first instance, the decision of a lower court upholding donations outside of service by "mail-ins" contradicts the church policy itself, invades on religious grounds, makes the state dictate religious policy to follow an interpretation of IRS that isn't even in the printed law, and contradicts the Supreme Court's

prior decisions on the separation of church and state. In the second instance, it needs to be reviewed, because the Court of Appeals has decided a question in conflict with other prior decisions of the court, namely the Cohan rule, where as we have seen, the Cohan Rule in one form or another must apply or else one is led to mathematical inconsistencies on the return($9000 unaccounted for) or else discrimination against religion by the IRS's own Memorandum in Opposition filed in this case.

As another example to show this Court how much a hodgepodge this case has become, the IRS on September 4,1980 irrationally filed a Federal Tax Lien against Petitioner's wife's house, in which petitioner has no legal interest at all. This constitutes a wrongful lien(Section 7624 Suit aginst IRS for injunction to block lien pending review by SCt) an usurps this Court's

right of review under Section 7481,6213 and the fact that the Tax Court decision has not yet become final pending review by this Court. Hence, IRS has resorted to intimidation procedures, illegal acts of making up courses of actions that are not in the printed regulations and has suffered from intercommunication problems within its own structure.

This case cuts across several boundaries: In one way, the freedom of the individual is at stake here, as this act of the IRS represents further erosion of the right to privacy and the free exercise of religion. Carried to its logical extreme if one were to adopt the "mail-in" concept of donations, then no allowance would be made for internal church donations, and would defeat in some measure the attendance at church. Common sense must prevail; this is ridiculous, and the church/state must exist in coharmony as the printed IR Code and the decisions of this court have been established. It is best to leave

the printed law and the church state alone, and this is the position of the petitioner, namely to not allow some bureaucratic policy to interfere with the operation of law and church; the First Amendment, although broad, is also in its own niche, and in the area of church and state, the First Amendment is relevant.

It is therefore respectfully requested that the petiton for certiorari be granted and the Court decide at that point on the full issues of the case rather than close off these possibilities at this time.

October 31, 1980

Dr. Geoffrey Akers,
Petitioner